

## **CHAPTER 15**

### **HUMAN RESOURCE MANAGEMENT**

#### **Employee Status**

##### **Employee versus Contracted Service**

Anyone who performs services is an employee if the employer can control what will be done and how it will be done. This is so even when the employee has freedom of action. It only matters that the employer has the legal right to control the method and result of the services. The employer will be liable for income tax and employee social security and Medicare taxes if these taxes are not deducted and withheld because the employer considered an employee to be a nonemployee (IRS Publication 15). Athletic Officials are employees (Revenue Ruling 57-119, CB 1957-1,331).

When some services performed by an employee would be employment while other services would not, use the guidance of the following regulation:

- a. If a portion of the services performed by an employee for the employer during a pay period constitutes employment, and the remainder does not constitute employment, all the services of the employee during the period shall for purposes of the tax be treated alike, that is, either all as included or all as excluded. The time during which the employee performs services which constitute employment, and the time during which the employee performs services which do not constitute employment, within the pay period, determine whether all the services during the pay period shall be deemed to be included or excluded.
- b. If one-half or more of the employee's time in the employ of a particular entity in a pay period is spent in performing services which constitute employment, then all the services of that employee for that entity in that pay period shall be deemed to be employment (IRS Regulation section 31.3306(d)-1). This regulation has been used by the IRS to allow districts to treat athletic officials who are not otherwise school employees as if they were contracted services.

##### **Uncertificated Teachers**

No person shall be employed as a teacher in a common school without having a certificate issued by some officer duly authorized by law. No compensation shall be recovered by a teacher for services rendered while without such certificate (294.1). School officials shall not employ an uncertificated person for teaching (OAG #44-6-2). A teacher without a certificate cannot be paid out of public funds (OAG #50-8-23).

##### **Probationary Teachers**

The first three consecutive years of employment of a teacher in the same school district are a probationary period. However, if a teacher has successfully completed a probationary period of employment for another school district located in Iowa, the probationary period in the current district of employment shall not exceed one year. A board of directors may waive the probationary period for any teacher who previously has served a probationary period in another school district and the board may extend the probationary period for an additional year with the consent of the teacher (279.19).

##### **Health Professionals**

The school board of any school district may employ public health nurses at periods each year and in numbers as deemed advisable. The council of any city, or the school board of any school district, or any of them acting in cooperation, may contract with any nonprofit nurses' association for public health nursing service. The compensation and expenses shall be paid out of the general fund of the political subdivision employing nurses (143.1).

Boards of directors in all public school districts may establish and maintain dental clinics for children and offer courses of instruction on mouth hygiene. The boards may employ such legally qualified dentists and dental hygienists as may be necessary to accomplish the purpose of this section. The cost of the dental clinic shall be paid from the general fund (280.7).

##### **Coaching Personnel**

School districts employing individuals to coach interscholastic athletic sports shall issue a separate extracurricular contract for each of these sports. An extracurricular contract offered under section 279.19A shall be separate from the

contract issued under section 279.13. Wages for employees who coach these sports shall be paid pursuant to established or negotiated supplemental pay schedules. An extracurricular contract shall be in writing, and shall state the number of contract days for that sport, the annual compensation to be paid, and any other matters as may be mutually agreed upon. The contract shall be for a single school year (279.19A(1)).

### **Trainees**

Employers participating in on-the-job training programs can receive payments covering training costs during the training period. The payment is based on a percentage of the participant's wages. JTPA program operators, or other certifying agencies, will screen and refer eligible workers and can arrange for participant classroom training, counseling orientation, and other supportive services. These services are provided without cost to the employer. Employers retain the right to make the final selection from among those referred (Job Training Partnership Act of 1982, 20 C.F.R. 626-638).

### **Immigration and Nationality Act**

Employers are required to verify employment eligibility of new employees and prohibits hiring illegal entrants or hiring aliens who legally entered the United States such as tourists but are not authorized to work while they are in the United States.

For more information, contact the U.S Government Department of Labor, Wage and Hour Division.

### **Nepotism**

It shall be unlawful for any person elected or appointed to any public office or position under the laws of the state to appoint as deputy, clerk, or helper in said office or position to be paid from the public funds, any person related by consanguinity or affinity, within the third degree, to the person elected appointed, or making said appointment, unless such appointment shall first be approved by the officer, board, council, or commission whose duty it is to approve the bond of the principal; provided this provision shall not apply in causes where such person appointed receives compensation at the rate of six hundred dollars per year or less, nor shall it apply to persons teaching in public schools (71.1).

The spouse of a member of the board of directors of a school district may be employed by or contracted with that school district. A board member whose spouse is so employed or contracted with should abstain from voting on issues where actual or potential conflicts of interest exist (OAG #89-9-2(L)).

### **Conflict of Interest**

Any person who serves or is employed by the state or a political subdivision of the state shall not engage in any outside employment or activity which is in conflict with the person's official duties and responsibilities. In determining whether particular outside employment or activity creates an unacceptable conflict of interest, situations in which an unacceptable conflict shall be deemed to exist shall include, but not be limited to, any of the following:

- a. The outside employment or activity involves use of the state's or the political subdivision's time, facilities, equipment, and supplies or the use of the state or political subdivision badge, uniform, business car, or other evidences of office or employment to give the person or member of the person's immediate family an advantage or pecuniary benefit that is not available to other similarly situated members or classes of members of the general public.
- b. The outside employment or activity involves the receipt of, promise of, or acceptance of money or other consideration by the person, or a member of the person's immediate family, from anyone other than the state or the political subdivision for the performance of any act that the person would be required or expected to perform as a part of the person's regular duties or during the hours during which the person performs service or work for the state or political subdivision of the state.
- c. The outside employment or activity is subject to the official control, inspection, review, audit, or enforcement authority of the person, during the performance of the person's duties of office or employment (68B.2A(1)).

If the outside employment or activity is employment or activity described in "a" or "b" above, the person shall immediately cease the employment or activity. If the outside employment or activity is employment or activity described in "c" above, the person shall take one of the following courses of action:

- a. Cease the outside employment or activity.
- b. Publicly disclose the existence of the conflict and refrain from taking any official action or performing any official duty that would detrimentally affect or create a benefit from the outside employment or activity. For this purpose, official action or duty includes, but is not limited to, participating in any vote, taking affirmative

action to influence any vote, granting any license or permit, determining the facts of law in a contested case or rulemaking proceeding, conducting any inspection, or providing any other official service or thing that is not available generally to members of the public in order to further the interests of the outside employment or activity (68B.2A(2)).

## **Equal Opportunity and Affirmative Action**

It is the policy of this state to provide equal opportunity in school district, area education agency, and community college employment to all persons. An individual shall not be denied equal access to school district, area education agency, or community college employment opportunities because of race, creed, color, religion, national origin, sex, age, or physical or mental disability. It also is the policy of this state to apply affirmative action measures to correct deficiencies in school district, area education agency, and community college employment systems where those remedies are appropriate. This policy shall be construed broadly to effectuate its purposes (19B.11(1)).

Each school district, area education agency, and community college shall be required to develop affirmative action standards which are based on the population of the community in which it functions, the student population served, or the persons who can be reasonably recruited (19B.11(2)).

Each school district, area education agency, and community college in the state shall submit to the director of the department of education an annual report of the accomplishments and programs of the district, agency, or community college carrying out the duties under section 19B.11. The report shall be submitted between December 15 and December 31 of each year. The director shall prescribe the form and content of the report (19B.11(3)).

It is an unfair or discriminatory practice for any educational institution to discriminate on the basis of race, creed, color, sex, national origin, religion, or disability in any program or activity. Such discriminatory practices shall include but not be limited to the following practices:

1. Exclusion of a person or persons from participation in, denial of the benefits of, or subjection to discrimination in any academic, extracurricular, research, occupational training, or other program or activity except athletic programs;
2. Denial of comparable opportunity in intramural and interscholastic athletic programs;
3. Discrimination among person in employment and the conditions of employment;
4. On the basis of sex, the application of any rule concerning the actual or potential parental, family or marital status of a person, or the exclusion of any person from any program or activity or employment because of pregnancy or related conditions dependent upon the physician's diagnosis and certification (216.9).

The federal Age Discrimination in Employment Act (ADEA) likely precludes a school district from establishing an early retirement program for its employees that diminishes benefits with advancing age. The ADEA likely permits a school district to take into account years of service in providing early retirement benefits to its employees. The ADEA does not necessarily preclude a school district from limiting participation in an early retirement program to employees younger than age sixty-five (OAG #96-10-7).

The Department of Management may impose appropriate sanctions on an AEA or school district in order to ensure compliance with state programs emphasizing equal opportunity through affirmative action, contract compliance policies, and requirements for procurement goals for targeted small businesses (19B.8).

## **Fair Labor Standards Act (FLSA)**

The Fair Labor Standards Act establishes minimum wages, overtime pay, equal pay, recordkeeping and child labor standards for employees.

Every employer shall maintain and preserve payroll or other records containing the following information and data with respect to each employee to whom minimum wage and/or overtime provisions apply:

1. Full legal name,
2. Home address including zip code,
3. Date of birth if under 19,
4. Gender and occupation in which employed,
5. Time of day and day of week on which the employee's workweek begins. If the employee is part of a workforce all of whose workers have a workweek beginning at the same time on the say day, a single notation for the whole workforce is sufficient.
6. Regular hourly rate of pay for any workweek in which overtime compensation is due,
7. Hours worked each workday and total hours worked each workweek,

8. Total daily or weekly straight-time earnings exclusive of overtime compensation,
9. Total premium pay for overtime hours,
10. Total additions to or deductions from wages indicating individual nature, amount, date,
11. Total wages paid each pay period, and
12. Date of payment and pay period covered by the payment.

With respect to each exempt employee in a bona fide executive, administrative, or professional capacity (including employees employed in the capacity of academic administrative personnel or teachers in elementary or secondary schools), employers shall maintain and preserve records containing all the information above except 6 through 10, and, in addition, the basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee's total remuneration for employment including fringe benefits and prerequisites.

The equal pay provisions of FLSA prohibit gender-based wage differentials between men and women employed in the same establishment who perform jobs that require equal skill, effort, and responsibility under similar working conditions. These provisions are enforced by the U.S. Government, Equal Employment Opportunity Commission who also enforces other statutes prohibiting discrimination in employment.

## **Veterans Preference**

In every public department and upon all public works in the state, and of the counties, cities, and school corporations of the state, honorably discharged veterans who are citizens and resident of this state are entitled to preference in appointment and employment over other applicants of no greater qualifications (35C.1).

The provisions of the Iowa Veteran's Preference Law apply to both permanent part-time and temporary or seasonal positions of a public employer (OAG #87-11-6(L)).

## **Polygraph Examination Prohibited**

An employer shall not as a condition of employment, promotion, or change in status of employment, or as an express or implied condition of a benefit or privilege of employment, knowingly do any of the following:

- a. Request or require that an employee or applicant for employment take or submit to a polygraph examination.
- b. Administer, cause to be administered, threaten to administer, or attempt to administer a polygraph examination to an employee or applicant for employment.
- c. Request or require that an employee or applicant for employment give an express or implied waiver of a practice prohibited by section 730.4 (730.4(2)).

## **Leaves of Absence**

### **Military Leave**

Employees are entitled to take either military leave or compensatory time on days when military duty interferes with scheduled work time. The employee should not return to work after earning a full day's pay from federal sources. Employers may attempt to schedule work days so as to avoid conflicts with military duty (OAG #89-2-5(L)).

### **Elective Office**

A person who is elected to a municipal, county, state, or federal office shall, upon written application to the employer of that person, be granted a leave of absence from regular employment to serve in that office except where prohibited by the federal law. The leave of absence may be granted without pay and shall be granted without loss of net credited service and benefits earned. This section shall not be construed to require an employer to pay pension, health or other benefits during the leave of absence to an employee taking a leave of absence under this section. An employee shall not be prohibited from returning to regular employment before the period expires for which the leave of absence was granted. Temporary substitute teachers and teachers hired on a temporary basis to replace teachers who have been granted leaves of absence pursuant to this section are not subject to the provisions of chapter 279 relating to the termination of continuing contracts (55.1).

Any person who is appointed to serve on a state board, upon written application to the person's employer, shall be granted leaves of absence from regular employment to attend the meetings of the state board, except if leaves of absence are prohibited by federal law. The leaves of absence may be granted without pay and shall be granted without loss of net credited service and benefits earned (55.3).

Any public employee who becomes a candidate for any elective public office shall, upon request of the employee and commencing any time within thirty days prior to a contested primary, special, or general election and continuing until after the day following that election, automatically be given a period of leave. An employee who is a candidate for any elective public office shall not campaign while on duty as an employee (55.4).

Any person violating chapter 55 is guilty of a simple misdemeanor. Each day in which the violation continues is a separate offense (55.5).

### **Educational Leave**

The board may approve a policy for educational leave for licensed school employees and for reimbursement for tuition paid by licensed school employees for courses approved by the board. Educational leave means a leave granted to an employee for the purpose of study including study in areas outside of a teacher's area of specialization, travel, or other reasons deemed by the board to be of value to the school system (279.12).

### **Sick Leave**

Public school employees are granted leave of absence for medically related disability with full pay in the following minimum amounts:

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| 1. | The first year of employment                 | 10 days. |
| 2. | The second year of employment                | 11 days. |
| 3. | The third year of employment                 | 12 days. |
| 4. | The fourth year of employment                | 13 days. |
| 5. | The fifth year of employment                 | 14 days. |
| 6. | The sixth and subsequent years of employment | 15 days. |

The above amounts shall apply only to consecutive years of employment in the same school district and unused portions shall be cumulative to at least a total of ninety days. The school board may grant more time than the days herein specified (279.40).

### **Family and Medical Leave Act**

Qualified employees may take up to twelve weeks of unpaid job-protected leave each year, with maintenance of group health insurance, for a serious personal health condition or in order to care for a family member with a serious health condition or for the birth and care for a child, or for the placement of a child for adoption or foster care (29 UCS 2601).

### **Opportunity to Vote**

Any person entitled to vote at an election who does not have three consecutive hours in the period between the time of the opening and the time of the closing of the polls during which the person is not required to be present at work for an employer, is entitled to such time off from work time to vote as will in addition to the person's nonworking time total three consecutive hours during the time the polls are open. Application by any employee for such absence shall be made individually and in writing prior to the date of the election, and the employer shall designate the period of time to be taken. The employee is not liable to any penalty nor shall any deduction be made from the person's regular salary or wages on account of such absence (49.109). Any employer who shall refuse to an employee this privilege or shall subject such employee to a penalty or reduction of wages because of the exercise of such privilege, or shall in any manner attempt to influence or control such employee as to how the employee shall vote, by offering any reward, or threatening discharge from employment, or otherwise intimidating or attempting to intimidate such employee from exercising the employee's right to vote, shall be guilty of a simple misdemeanor (49.110).

## **Deductions and Withholding from Wages**

### **Garnishment**

Federal wage garnishment law, limits the amount of an employee's disposable earnings which may be withheld in any one week by an employer to satisfy creditors. The law also prohibits an employer from discharging an employee whose earnings have been subjected to garnishment for any one indebtedness (Consumer Credit Protection Act, Title III, 29 C.F.R. 870).

The right of any person to any future payment under a pension and annuity retirement system established in chapter 294 shall not be transferable or assignable, at law or in equity, and shall not be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law, except for the purposes of enforcing child, spousal, or medical support obligation, or marital property orders (294.10B).

## **Payroll Deductions**

An agency may not assess a service charge for processing employee payroll deductions for items such as health insurance and deferred compensation plans (OAG #81-5-7(L)).

## **Employee Benefits**

### **Annuities**

At the request of an employee through contractual agreement a school district may purchase group or individual annuity contracts for employees, which annuity contracts are issued by a nonprofit corporation issuing retirement annuities exclusively for educational institutions and their employees or are purchased from any company the employee chooses that is authorized to do business in this state or through an Iowa-licensed salesperson that the employee selects, on a group or individual basis, for retirement or other purposes, and may make payroll deductions in accordance with the arrangements for the purpose of paying the entire premium due and to become due under the contract. The deductions shall be made in the manner which will qualify the annuity premiums for the benefits under section 403(b) of the Internal Revenue Code, as defined in section 422.3. The employee's rights under the annuity contract are nonforfeitable except for the failure to pay premiums (294.16).

An employee of a school district has a statutory right to select the provider of an annuity contract made available by the school district for his/her benefit even if the annuity is funded solely with school district money (OAG #90-1-5).

A school district may not limit the number of authorized annuity and mutual fund providers with which its employees may contract (OAG #89-6-1(L)).

A school district may purchase an annuity for its employees which is invested in mutual funds so long as the annuity is purchased from an authorized insurance company and an Iowa-licensed agent (OAG #87-6-2(L)).

Governing bodies may not limit the number of authorized insurance companies from which its employees may select annuity contracts. The governing body may not encourage or discourage employee participation in annuity programs, but must make such programs available upon employee request. Lists of employees—but not list of employees participating in annuity program—must be made available to the public (OAG #91-6-7(L)).

### **Medical Insurance Programs**

Teachers and administrators are free to contract for provision of a self-funded medical insurance program. The ability of a board to establish group insurance plans does not prohibit contracting for a self-funded plan (OAG #80-10-11).

If a retired employee of a publicly funded governing body had family coverage prior to retirement before age 65, continuation of coverage must be offered on that basis, i.e., for the employee's dependents, after retirement, at the employee's expense (OAG #91-6-5(L)).

### **Food and Entertainment**

The Code does not allow school districts to provide school lunches without charge to staff members, except where staff members are on lunch room supervisory duty or pursuant to contract (OAG #82-2-6(L)).

### **Travel and Transportation**

Meal reimbursements paid are subject to income tax withholding if they are not paid under an accountable plan which requires the meal expenses be substantiated as deductible under I.R.C. section 162(a), either as business expenses incurred while away from home overnight, or as the rare type of meal expenses which qualifies as an ordinary and necessary business expense (OAG #98-5-2(L)).

When a public officer or employee, other than a state officer or employee, is entitled to be paid for expenses in performing a public duty, a charge shall be made, allowed, and paid for the use of an automobile, as determined by the local governing body, in an amount which may be the maximum allowable under federal internal revenue service rules per mile, notwithstanding established mileage requirements or depreciation allowances. A statutory provision stipulating necessary mileage, travel, or actual reimbursement to a local public officer or employee falls within the mileage reimbursement limitation specified in this section unless specifically provided otherwise. A political

subdivision may authorize the use of private vehicles for the conduct of official business of the political subdivision at an annual amount in lieu of actual and necessary travel expense reimbursement provided in this section (70A.9).

No law shall be construed to give to a public officer or employee both mileage and expenses for the same transaction (70A.10). No public officer or employee shall be allowed either mileage or transportation expense when gratuitously transported by another, nor when transported by another public officer or employee who is entitled to mileage or transportation expense (70A.11).

### **Service Club Dues**

Public funds may be used to pay for public employees' dues for service clubs only if directly related to an employee's duties. The governing body must determine that a public purpose is met and that the public purpose is not merely incidental to the private benefit to the employee. This test would not likely be met except in an unusual case (OAG #90-7-3(L)).

### **Worker Compensation**

The Iowa worker compensation law in chapter 85 requires most employers to provide benefits to eligible employees who have injuries arising out of and in the course of employment.

Where the school corporation or AEA is the employer, the provisions of chapter 85 on workers' compensation for the payment of compensation and amount thereof for an injury sustained by an employee of such employer shall be exclusive, compulsory, and obligatory upon both employer and employee, except as otherwise provided in section 85.1. For the purposes of chapter 85 elected and appointed officials shall be employees (85.2).

A school employee who, in the course of employment, suffers a personal injury causing temporary total disability, or a permanent partial or total disability, resulting from an episode of violence toward that employee, for which workers' compensation under chapter 85 is payable, shall be entitled to receive workers' compensation, which the district shall supplement in order for the employee to receive full salary and benefits for the shortest of the following periods:

- a. One year from the date of the disability.
- b. The period during which the employee is disabled and incapable of employment.

During this period, the school employee shall not be required to use accumulated sick leave or vacation (280.21A(1)).

### **Violence and Altercations**

An employee of an accredited public school district or AEA shall not inflict, or cause to be inflicted, corporal punishment upon a student. An employee's physical contact with the body of a student shall not be considered corporal punishment if it is reasonable and necessary under the circumstances and is not designed or intended to cause pain or if the employee uses reasonable force for the protection of the employee, the student, other students, to obtain the possession of a weapon or other dangerous object within a student's control, or for the protection of property (280.21(1)).

An employee of an accredited public school district or AEA may intervene in a fight or physical struggle occurring among students or between students and nonstudents that takes place in the presence of the school employee in a school building, on school premises, or at any school function or school-sponsored activity regardless of its location. The degree and force of the intervention may be as reasonably necessary, in the opinion of the school employee, to restore order and protect the safety of the individuals involved in the altercation and others in the vicinity of the altercation (280.26).

An employee of a school district or an AEA who participates in good faith and acts reasonably in the making of a report to, or investigation by, an appropriate person or agency regarding violence, threats of violence, or other inappropriate activity against a school employee or student in a school building, on school grounds, or at a school-sponsored function shall be immune from civil or criminal liability relating to such action as well as for the participating in any administrative or judicial proceeding resulting from or relating to the report or investigation (280.27).

When a person commits an act that would otherwise be considered assault, where the person doing the act is employed by a school district or is an AEA staff member who provides services to a school or school district, and intervenes in a fight or physical struggle, or other disruptive situation, that takes place in the presence of the employee or staff member performing employment duties in a school building, on school grounds, or at an official school function regardless of the location, the act shall not be an assault, whether the fight or physical struggle or other disruptive situation is

between students or other individuals, if the degree and the force of the intervention is reasonably necessary to restore order and to protect the safety of those assembled (708.1).

## **Performance Evaluations**

The board shall establish written evaluation criteria and shall establish and annually implement evaluation procedures. The board shall also establish written job descriptions for all supervisory positions (279.23A). Each board shall adopt evaluation criteria and procedures for all contracted staff. The evaluation processes shall conform to Iowa Code sections 272.33, 279.14, and 279.23A (IAC 281--12.3(3)).

## **Reductions in Force and Terminations**

If any person, agent, company, corporation, after having discharged any employee from service, shall prevent or attempt to prevent, by word or writing of any kind, such discharged employee from obtaining employment with any other person, company or corporation, except by furnishing in writing on request a truthful statement as to the cause of the person's discharge, such person, agent, company, or corporation shall be guilty of a serious misdemeanor and shall be liable for all damages sustained by any such person (730.1).

An employer or an employer's representative who, upon request by or authorization of a current or former employee or upon request made by a person who in good faith is believed to be a representative of a prospective employer of a current or former employee, provides work-related information about a current or former employee, is immune from civil liability unless the employer or the employer's representative acted unreasonably in providing the work-related information 91B.2(1)).

An employer acts unreasonably if any of the following are present:

- a. The work-related information violates a civil right of the current or former employee.
- b. The work-related information knowingly is provided to a person who has no legitimate and common interest in receiving the work-related information.
- c. The work-related information is not relevant to the inquiry being made, is provided with malice, or is provided with no good faith belief that it is true (91B.2(2)).

## **Safe and Healthy Workplace**

It is the policy of this state to assure so far as possible every working person in the state safe and healthful working conditions and to preserve human resources (88.1).

## **Dress Codes**

The general assembly finds and declares that the students and the administrative and instructional staffs of Iowa's public schools have the right to be safe and secure at school. Gang-related apparel worn at school draws attention away from the school's learning environment and directs it toward thought or expressions of violence, bigotry, hate, and abuse. The board of directors of a school district may adopt, for the district or for an individual school within the district, a dress code policy that prohibits students from wearing gang-related or other specific apparel if the board determines that the policy is necessary for the health, safety, or positive educational environment of student and staff in the school environment or for the appropriate discipline and operation of the school (279.58).

## **Collective Bargaining**

### **Employee Election**

Upon the filing of a petition for certification of an employee organization, the board shall submit a question to the public employees at an election in an appropriate bargaining unit. The question on the ballot shall permit the public employees to vote for no bargaining representation or for any employee organization which has petitioned for certification or which has presented proof satisfactory to the board of support of ten percent or more of the public employees in the appropriate unit (20.15(1)).

### **Public Employer Rights and Responsibilities**

Public employers shall have, in addition to all powers, duties, and rights established by constitutional provision, statute, ordinance, charter, or special act, the exclusive power, duty, and the right to:



1. Direct the work of its public employees.
2. Hire, promote, demote, transfer, assign and retain public employees in positions within the public agency.
3. Suspend or discharge public employees for proper cause.
4. Maintain the efficiency of governmental operations.
5. Relieve public employees from duties because of lack of work or for other legitimate reasons.
6. Determine and implement methods, means, assignments and personnel by which the public employer's operations are to be conducted.
7. Take such actions as may be necessary to carry out the mission of the public employer.
8. Initiate, prepare, certify and administer its budget.
9. Exercise all powers and duties granted to the public employer by law (20.7).

Upon the receipt by a public employer of a request from an employee organization to bargain on behalf of public employees, the duty to engage in collective bargaining shall arise if the employee organization has been certified by the board as the exclusive bargaining representative for the public employees in that bargaining unit (20.16).

It shall be unlawful for any public employer to authorize, consent to, or condone a strike; or to pay or agree to pay any public employee for any day in which the employee participates in a strike; or to pay or agree to pay any increase in compensation or benefits to any public employee in response to or as a result of any strike or any act which violates this section (20.12(2)).

### **Public Employee Rights and Responsibilities**

Public employees shall have the right to:

1. Organize, or form, join, or assist any employee organization.
2. Negotiate collectively through representatives of their own choosing.
3. Engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection insofar as any such activity is not prohibited by chapter 20 or any other law of the state.
4. Refuse to join or participate in the activities of employee organizations, including the payment of any dues, fees or assessments or service fees of any type (20.8).

It shall be unlawful for any public employee or any employee organization, directly or indirectly, to induce, instigate, encourage, authorize, ratify or participate in a strike against any public employer (20.12(1)).

### **Scope of Negotiations**

The public employer and the employee organization shall meet at reasonable times, including meetings reasonably in advance of the public employer's budget-making process, to negotiate in good faith with respect to wages, hours, vacations, insurance, holidays, leaves of absence, shift differentials, overtime compensation, supplemental pay, seniority, transfer procedures, job classifications, health and safety matters, evaluation procedures, procedures for staff reduction, in-service training and other matters mutually agreed upon. Negotiations shall also include terms authorizing dues checkoff for members of the employee organization and grievance procedures for resolving any questions arising under the agreement, which shall be embodied in a written agreement and signed by the parties. If an agreement provides for dues checkoff a member's dues may be checked off only upon the member's written request and the member may terminate the dues checkoff at any time by giving thirty days' written notice. Such obligation to negotiate in good faith does not compel either party to agree to a proposal or make a concession. All retirement systems shall be excluded from the scope of negotiations (20.9).

### **Prohibited Practices**

It shall be a prohibited practice for any public employer, public employee, or employee organization to willfully refuse to negotiate in good faith with respect to the scope of negotiations (20.10(1)).

It shall be a prohibited practice for a public employer or the employer's designated representative willfully to:

- a. Interfere with, restrain or coerce public employees in the exercise of rights granted by chapter 20.
- b. Dominate or interfere in the administration of any employee organization.
- c. Encourage or discourage membership in any employee organization, committee, or association by discrimination in hiring, tenure, or other terms or conditions of employment.
- d. Discharge or discriminate against a public employee because the employee has filed an affidavit, petition or complaint or give any information or testimony under chapter 20, or because the employee has formed, joined or chosen to be represented by any employee organization.
- e. Refuse to negotiate collectively with representatives of certified employee organizations as required in chapter 20.

- f. Deny the rights accompanying certification or exclusive recognition granted in chapter 20.
- g. Refuse to participate in good faith in any agreed upon impasse procedures or those set forth in chapter 20.
- h. Engage in a lockout (20.10(2)).

It shall be a prohibited practice for public employees or any employee organization or for any person, union, or organization or their agents willfully to:

- a. Interfere with, restrain, coerce or harass any public employee with respect to any of the employee's rights under chapter 20 or in order to prevent or discourage the employee's exercise of any such right, including, without limitation, all rights under section 20.8.
- b. Interfere, restrain, or coerce a public employer with respect to rights granted in chapter 20 or with respect to selecting a representative for the purposes of negotiating collectively on the adjustment of grievances.
- c. Refuse to bargain collectively with a public employer as required in chapter 20
- d. Refuse to participate in good faith in any agreed upon impasse procedures or those set forth in chapter 20.
- e. Violate section 20.12 [prohibition of strikes].
- f. Violate the provisions of sections 732.1 to 732.3, which are hereby made applicable to public employers, public employees and public employee organizations.
- g. Picket in a manner which interferes with ingress or egress to the facilities of the public employer.
- h. Engage in, initiate, sponsor or support any picketing that is performed in support of a strike, work stoppage, boycott or slowdown against a public employer.
- i. Picket for any unlawful purpose (20.10(3)).

It shall be unlawful for any labor union, association or organization, or the officers, representatives, agents or members thereof, to enter into any contract, agreement, arrangement, combination or conspiracy for the purpose of, by strikes or threats of strikes, by violence or threats of violence, by coercion, or by concerted refusal to make, manufacture, assemble, or use, handle, transport, deliver or other deal with any articles, products, or materials:

- 1. To force or require any person, firm or corporation to cease using, selling, handling, transporting or dealing in the goods or products of any other person, firm or corporation, or
- 2. To force or require any person, firm or corporation to cease selling, transporting, delivering good or products to any other person, firm or corporation, or
- 3. To force or require any employer other than their own employer to recognize, deal with, comply with the demands of, or employ members of any labor union, association, or organization, or
- 4. To force or require any employer to break an existing collective bargaining agreement which such employer may have with any labor union, association or organization (732.1).

It shall be unlawful for any labor union, association or organization, or the officers, representatives, agents, or a member or members thereof to carry out or attempt to carry out in this state any contract, agreement, arrangement, combination or conspiracy declared unlawful in section 732.1 (732.2).

It shall be unlawful for any labor union, group, association or organization, or the officers, representatives, agents or members thereof, to cause a stoppage or slowdown of the work or a part of the work of an employer because of a dispute between labor unions, groups, associations or organizations, or the officers, representatives, agents or members thereof, with respect to jurisdiction over, or the right to do the work or a part of the work of such employer (732.3).

The expressing of any views, argument or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of any unfair labor practice under any of the provisions of chapter 20, if such expression contains no threat of reprisal or force or promise of benefit (20.10(4)).

### **Access to Mailboxes**

The board of directors of a school district shall provide not-for-profit, professional education associations that offer membership to teachers or administrators equal access to teacher or administrator mailboxes for distribution of professional literature (279.59).

## **Personnel Files and Privacy**

### **Personnel Files**

An employee shall have access to and shall be permitted to obtain a copy of the employee's personnel file maintained by the employee's employer including but not limited to performance evaluations, disciplinary records, and other information concerning employer-employee relations. However, an employee's access to a personnel file is subject to all of the following:

1. The employer and employee shall agree on the time the employee may have access to the employee's personnel file, and a representative of the employer may be present.
2. An employee shall not have access to employment references written for the employee.
3. An employer may charge a reasonable fee for each copy made by the employer for an employee of an item in the employee's personnel file. Reasonable fee means an amount equivalent to an amount charged per page for copies made by a commercial copying business (91B.1).

### **Privacy**

In *O'Connor v. Ortega* (55 U.S.L.W. 4405) the U.S. Supreme Court established that the privacy rights of public employees extend to their offices but that employers can search desks and files without warrants under certain circumstances.

## **Iowa Gift Law**

Iowa Code chapter 68B, Division II, and OAG #92-9-3, gives guidance for public officials and employees on prohibited acceptance of gifts.

It is the goal of the general assembly that public officials and public employees of the state be extremely cautious and circumspect about accepting a gratuity or favor, especially from persons that have a substantial interest in the legislative, administrative, or political actions of the official or employee. Even where there is a genuine personal friendship, the acceptance of personal benefits from those who could gain advantage by influencing official actions raises suspicions that tend to undermine the public trust. It is therefore the intent of the general assembly that the provisions of division II of chapter 68B be construed to discourage all gratuities, but to prohibit only those that create unacceptable conflicts of interest or appearances of impropriety (68B.21).

Except as otherwise provided in section 68B.22, a public official, public employee, or candidate, or that person's immediate family member shall not, directly or indirectly, accept or receive any gift or series of gifts from a restricted donor (68B.22).

A gift means a rendering of anything of value in return for which legal consideration of equal or greater value is not given and received (68B.2(9)).

An honorarium means anything of value that is accepted or given as consideration for an appearance, speech, or article (68B.2(10)).

A public official or public employee shall not seek or accept an honorarium from a restricted donor (68.23).

An official shall not, directly or indirectly, seek or accept a loan or series of loans from a person who is a lobbyist (68B.24(1)).

The term expenditure, not otherwise defined, should be given its ordinary meaning as a disbursement for the purpose of lobbying (OAG #92-9-3).

A gift is merely something transferred by one person to another without compensation regardless of the form and would include food and drink (OAG #87-1-13).

A discount on a computer purchase is not a gift prohibited by the gift law, if the purchase price constitutes legal consideration of equal or greater value than the computer products and the discount reflects a list price available to a particular segment of the public. Ultimately, determination of the market value of the computer products is an issue of fact. If the computer retailer is not a "restricted donor" within the scope of one of the four alternative categories set forth in the statute, the gift law does not apply and a discount could not violate the gift law (OAG #93-7-7(L)).

An AEA probably could not pay the costs for food and beverages of school district employees and school board members attending an AEA business meeting or the costs for lodging, food, and beverages of such persons attending an AEA sponsored educational conference, seminar, or workshop to the extent these costs exceed three dollars per person per day. An AEA could not waive the registration fees of school district employees or school board members attending an AEA sponsored educational conference, seminar, or workshop, absent an exception to the prohibition against gifts from restricted donors. The agenda of the conference, seminar, or workshop and the existence of contractual relations between the AEA and a school district are factors that may affect these conclusions (OAG #96-4-4).

## **Employee Exchange Programs**

Any department, agency, or instrumentality of the state, county city, municipality, land-grant college, or college or university operated by the state or any local government is authorized to participate in a program of interchange of employees with departments, agencies, or instrumentalities of the federal government, another state or locality, or other agencies, municipalities, or instrumentalities of this state as a sending or receiving agency (28D.3(1)).

If funds are appropriated by the general assembly, an Iowa teacher exchange program is established to permit school districts to exchange licenses instructional personnel with other districts in order to promote the exchange and enhancement of instructional methods and materials and encourage the educational development of Iowa's teachers (279.55).

## **Educational Excellence Funding**

The purpose of chapter 294A is to promote excellence in education. In order to maintain and advance the educational excellence in the state of Iowa, chapter 294A establishes the Iowa educational excellence program. The program shall consist of three major phases addressing the following:

1. Phase I—The recruitment of quality teachers.
2. Phase II—The retention of quality teachers.
3. Phase III—The enhancement of the quality and effectiveness of teachers through the utilization of performance pay (294A.1).

An educational excellence fund is established in the office of treasurer of state to be administered by the department of education. Moneys appropriated by the general assembly for deposit in the fund shall be paid to school districts and area education agencies pursuant to the requirements of chapter 294A and shall be expended only to pay for increases in the regular compensation of teachers and other salary increases for teachers, to pay the costs of the employer's share of federal social security and Iowa public employees' retirement system, or a pension and annuity retirement system established under chapter 294, payments on the salary increases, and to pay costs associated with providing specialized or general training. Moneys received by school districts and AEAs shall not be used for pay earned by a teacher for performance of additional noninstructional duties. If moneys are appropriated by the general assembly to the fund for distribution under this chapter the moneys shall be allocated by the department so that allocations of moneys for phase I and II are made prior to the allocation of moneys for phase III (294A.3).

The goal of phase I is to provide for establishment of pay plans incorporating sufficient annual compensation to attract quality teachers to Iowa's public school system (294A.4). As the salary bases increase, the Phase I dollars received by the district do not become excess to be distributed in addition to the increase in the salary schedule but are assumed to be included in the general increase in salaries (D.o.E. App. Dec. #42).

The goal of phase II is to keep Iowa's best educators in the profession and assist in their development by providing general salary increases (294A.8).

The goal of phase III is to enhance the quality, effectiveness, and performance of Iowa's teachers by promoting teacher excellence. This will be accomplished through the development of performance-based pay plans and supplemental pay plans requiring additional instructional work assignments which may include specialized training or differential training, or both. It is the intent of the general assembly that school districts and AEAs incorporate into their planning of performance-based pay plans and supplemental pay plans, implementation of recommendations from recently issued national and state reports relating to the requirements of the educational system for meeting future educational needs, especially as they relate to the preparation, working conditions, and responsibilities of teachers, including but not limited to assistance to new teachers, development of teachers as instructional leaders in their schools and school districts, using teachers for evaluation and diagnosis of other teachers' techniques, and the implementation of sabbatical leaves. It is also the intent of the general assembly that a performance-based pay plan and supplemental pay plan submitted by a district include a parent involvement policy designed to increase student achievement and self-esteem by bringing home and school into closer relationship and that provides methods by which parents and teachers may cooperate intelligently in the education of children. It is further the intent of the general assembly that real and fundamental change in the educational system must emerge from the school site if the education system is to remain relevant and that plans funded in this program must be an integral part of a comprehensive school district effort toward meeting identified district goals or needs (294A.12).

A school district ordinarily will include Phase I salary payments in a teacher's regular paycheck but under the terms of Iowa Code section 91A.3, by agreement between the school district and the teachers as a group or as individuals the schedule for distribution may be different (OAG #88-1-8(L)).

### **Student Achievement and Teacher Quality Program**

A student achievement and teacher quality program is established to promote high student achievement. The program shall consist of the following four major elements:

1. Mentoring and induction programs that provide support for beginning teachers in accordance with section 284.5.
2. Career paths with compensation levels that strengthen Iowa's ability to recruit and retain teachers.
3. Professional development designed to directly support best teaching practices.
4. Team-based variable pay that provides additional compensation when student performance improves (284.1).

### **Staff Development**

Each school district shall incorporate into its comprehensive school improvement plan provisions for the professional development of all staff. To meet the professional needs of all staff, staff development activities shall align with district goals; shall be based on student and staff information; shall prepare all employees to work effectively with diverse learners and to implement multicultural, gender fair approaches to the educational program; and shall emphasize the research-based practices to achieve increased student achievement, learning, and performance as stated in the comprehensive school improvement plan. The board shall annually budget specified funds to implement the staff development plan (IAC 281--12.7).

Required or recommended staff development includes, but is not limited to:

1. Investigator of alleged student abuse by employees training (IAC 281--102.5(4)).
2. Affirmative Action (IAC 281--95.4(5)).
3. Bus Driver's Training (321.376(2)).
4. Child Abuse (232.69(3)).
5. Educational Aides (IAC 281--12.4(8)).
6. Gifted and Talented (IAC 281--59.5(8)).
7. Human Growth and Development (279.50(2)).
8. Career Pathways Grant for Implementation of High-standard Curriculum (256.39).

### **Committees and Advisory Councils**

All appointive boards, commissions, committees and councils of the state established by the Iowa Code if not otherwise provided by law shall be gender balanced (69.16A).

Required or recommended committees and advisory councils include, but are not limited to:

1. Family Support Program Advisory Committee (256A.5).
2. School Improvement Advisory Committee (280.12(2), IAC 281--12.2).
3. Advisory Council for Vocational Education (258.9).
4. Educational Excellence Phase III Committee (294A.15).
5. Family Resource Center Advisory Committee (256C.2).
6. Persons with Disabilities Parking Review Committee (321L.5).